

**Warrant Article 33 – Proposed Amendment of Article 2.1 of the Town bylaws (pertaining to procedures of Town Meetings)**

**Recommendation:** The Administration & Finance Subcommittee recommended No Action by a Vote of 3-0 with no abstentions

<p><b>Executive Summary:</b></p>	<p>WA 33 seeks to amend section 2.1.9 (“Conduct of the Meetings”) of the Town bylaws as follows:</p> <p>SECTION 2.1.9 CONDUCT OF THE MEETINGS The proceedings of Town Meetings shall be conducted in accordance with the handbook of parliamentary law, “Town Meeting Time” published by the Massachusetts Moderators Association, the traditions in Brookline as codified in the Town Meeting Handbook and these by-laws.</p> <p>Thus the “traditions in Brookline’ are replaced by the Town Meeting Handbook. Changes to the procedures codified in the Town Meeting Handbook would need ratification by a majority vote of Town Meeting and would then apply immediately to the conduct of the Meeting at which they are ratified.</p> <p>The subcommittee valued the objective of WA33, which is to reduce the ambiguity that is inherent in relying on three sets of principles and rules for the conduct of Town Meeting, but had multiple concerns:</p> <p>There was concern that the Moderator’s effectiveness could be significantly reduced. Town Counsel advised that there is a potential interpretation of the amendment of WA33 that would limit the Moderator’s ability to regulate procedures per Massachusetts General Laws, chapter 39, section 15. The Attorney General would be unlikely to be willing to review each new edition of Town Meeting Handbook.</p> <p>There was concern that amendments to the Handbook, which would take effect immediately, could be used to influence deliberations on specific items that were coming up imminently for discussion.</p>
<p><b>Voting Yes will...</b></p>	<p>Amend the bylaw to create a set of procedural rules in the Town Meeting Handbook that, once ratified by Town Meeting, will have immediate effect and will add to the rules on the procedures adopted at Town Meeting alongside Town Meeting Time and Town bylaws, subject to Massachusetts General Law.</p>
<p><b>Voting No will...</b></p>	<p>Maintain the status quo for the regulation of the conduct of Town Meeting proceedings</p>
<p><b>Financial</b></p>	<p>Likely to be de minimis</p>

<b>impact</b>	
<b>Legal implications</b>	See discussion below

**Introduction**

The Administration and Finance Subcommittee of the Advisory Committee held a public hearing on Zoom on WA 33 on May 6<sup>th</sup> at 8:30 am. Those attending the meeting were: Scott Ananian for the Petitioners (Scott Ananian and Dave Gacioch); Kelly Hardebeck (chair), Neil Gordon and Stephen Reeders for the Subcommittee; Joe Callanan (Town Counsel) and Jonathan Simpson (Associate Town Counsel) for the office of Town Counsel; and John VanScoyoc, a member of the public.

Section 2.1.9 of the Town By-Laws currently states that proceedings at Town Meeting shall be conducted in accordance with the handbook of parliamentary law, ‘Town Meeting Time’ published by the Massachusetts Moderators Association, the traditions in Brookline and these by-laws.”

WA 33 seeks to amend section 2.1.9 (“Conduct of the Meetings”) of the Town bylaws as follows:

**SECTION 2.1.9 CONDUCT OF THE MEETINGS** The proceedings of Town Meetings shall be conducted in accordance with the handbook of parliamentary law, “Town Meeting Time” published by the Massachusetts Moderators Association, the traditions in Brookline as codified in the Town Meeting Handbook and these by-laws.

Thus the “traditions in Brookline’ are replaced by the Town Meeting Handbook.

The proposed amendment requires that changes to the procedures codified in the Town Meeting Handbook shall not be effective until they are ratified by a majority vote of Town Meeting and shall apply to the conduct of the Meeting at which they are ratified and subsequent meetings.

Further, it is proposed that the Town shall simultaneously approve the 2021 version of the Town Meeting handbook, when it is published.

**Evaluation Methodology/Research**

The sub-committee consulted the Office of Town Counsel.

**Discussion**

In presenting the Warrant Article the Petitioner drew attention to the fact that the “traditions in Brookline” language of current Section 2.1.9 is vague and subject to interpretation. Traditions evolve over time and, moreover, Town Meeting Time does not always resolve potential alternative interpretations. A Town meeting Handbook, as ratified by Town Meeting, would provide a single source of procedural rules, for Town Meeting members, especially newer ones, to find clarification. The Handbook would of course need to conform to Commonwealth law.

The Petitioner noted that, as drafted, the amendment still does not clearly state which of three sources of rules takes precedence. He believes Brookline is an outlier in having relatively little guidance in Section 2.1.9 and contrasted it with other communities, such as Arlington, where more clarity is provided. His view is that less ambiguity in procedural rules would provide for better conduct of Town Meeting business.

The Petitioner reviewed the question of whether changes to the Handbook would require review of and approval by the Massachusetts Attorney General (“AG”) and noted precedents in zoning bylaws that allow changes to be made without AG review. His intent was to try to minimize the need for review while noting that it may be necessary in some instances.

The sub-committee asked Town counsel to comment, with reference to state law, on the powers of the Town Moderator and Town Meeting to establish procedures. The Associate Town Counsel drew attention to Massachusetts General Laws, chapter 39, section 15. This law sets out the various powers of Town moderator and Town Meeting (by bylaw amendment) to regulate procedures of Town Meeting. The law states that “The moderator shall preside and regulate the proceedings, decide all questions of order, and make public declaration of all votes, and may administer in open meeting the oath of office to any town officer chosen thereat.” A concern of Town Counsel is a potential interpretation of the amendment of WA33 that would limit the Moderator’s ability to regulate procedures per Section 15. Further, while noting the laudable goal of WA33 to clear up some ambiguities, changes to Town Meeting Handbook could not be treated as having the effect of bylaw amendments and would have the potential to be legally problematic. It is unlikely that the AG will be prepared to look through Town Meeting Handbook and check that, for example, it does not run afoul of substantive law.

The sub-committee asked for clarification from the Petitioners as to how the changes to the Handbook would work in practice. Mr Ananian envisaged that an amendment to the Handbook would be submitted as a routine Warrant Article before Town Meeting, that Town Meeting would consider it early in the course of its proceedings and if ratified, the new procedural rules in Town Meeting Handbook would become effective instantly. Mr Gordon was concerned that the order of insertion of the Warrant Article and the amendments thereto could become politicized in the context of the particular matters to be discussed at Town Meeting at that sitting. While acknowledging that there was potential for misuse, the Petitioners believe such risk to be small and potentially overcome by setting earlier deadlines for Handbook amendment.

Ms Hardebeck asked the petitioners if they had considered simply developing a process that would amend Town Meeting Handbook to make procedures easier to understand for Town Meeting Members rather than codifying the role of town Meeting Handbook in a bylaw. Mr Ananian believes that by putting Handbook amendments to a Town Meeting vote, the effect would be to endure regular review and make the description of procedures more precise.

There was further discussion about the risk of adding new ways by which parties could influence the proceedings of Town Meeting through Handbook amendments. Further, there was a risk that the role of the Moderator to regulate proceedings to ensure fairness could be adversely impacted. A concern was raised that giving immediate effect to changes to the Handbook might allow a

group, by specific and targeted changes to procedure, to affect the outcome of specific deliberations and votes that were about to made.

### **Recommendation**

The Ad Hoc Subcommittee, by unanimous vote 3-0 with no abstentions, recommended No Action.